

1
2
3
4
5
6 **BEFORE THE**
7 **BOARD OF PHARMACY**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to
11 Revoke Probation Against:

12 ROBERT WILLIAM HESS
13 2921 Pico Place
14 Oxnard, CA 93033

15 Original Pharmacist License No. RPH 38585

16 Respondent.

Case No. 3022

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

17 FINDINGS OF FACT

18 1. On or about February 10, 2006, Complainant, Virginia Herold, in her
19 official capacity as Interim Executive Officer of the Board of Pharmacy, Department of
20 Consumer Affairs (Board), filed Accusation and Petition to Revoke Probation No. 3022 against
21 ROBERT WILLIAM HESS (Respondent) before the Director of Consumer Affairs.

22 2. On or about June 11, 1984, the Board issued Pharmacist License No. RPH
23 38585 to Robert William Hess. Effective January 7, 1995, following a Default Decision, the
24 Board of Pharmacy revoked Respondent's Pharmacist license. Effective October 8, 1999, the
25 Board granted Respondent's petition for reinstatement. Upon reinstatement, the license was
26 revoked. However, the revocation was stayed, and Respondent was placed on probation for five
27 (5) years with terms and conditions. On or about July 27, 2004, Respondent's Pharmacist license
28 was suspended for failure to take and pass the pharmacist's examination. The Original
Pharmacist License expired on October 31, 2005, and has not been renewed.

1 3. On or about December 20, 2006, Louise Steinberg, an employee of the
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation and
3 Petition to Revoke Probation No. 3022, Statement to Respondent, Notice of Defense, Request for
4 Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's
5 address of record with the Board.

6 A copy of the Accusation and Petition to Revoke Probation, the related documents, and
7 Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

8 4. Service of the Accusation and Petition to Revoke Probation was effective
9 as a matter of law under the provisions of Government Code section 11505, subdivision (c).

10 5. On or about December 23, 2006, Respondent sent the Domestic Return
11 Receipt back to the Office of the Attorney General located at 300 S. Spring Street, Los Angeles,
12 CA 90013. A copy of the Domestic Return Receipt is attached hereto as exhibit B, and is
13 incorporated herein by reference.

14 6. Government Code section 11506 states, in pertinent part:

15 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
17 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
18 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

19 7. California Government Code section 11520 states, in pertinent part:

20 "(a) If the respondent either fails to file a notice of defense or to appear at the
21 hearing, the agency may take action based upon the respondent's express admissions or
22 upon other evidence and affidavits may be used as evidence without any notice to
23 respondent."

24 8. Respondent failed to file a Notice of Defense within 15 days after service
25 upon him of the Accusation and Petition to Revoke Probation, and, therefore, waived his right to
26 a hearing on the merits of Accusation and Petition to Revoke Probation No. 3022.

27 9. Pursuant to its authority under Government Code section 11520, the
28 Executive Officer finds Respondent in default. The Executive Officer will take action without

1 further hearing and, based on Respondent's express admissions by way of default and the
2 evidence before it, contained in exhibits A and B, finds that the allegations in Accusation and
3 Petition to Revoke Probation No. 3022 are true.

4 10. The total costs for investigation and enforcement are \$2689.75 as of
5 January 31, 2007.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent ROBERT WILLIAM
8 HESS has subjected his Pharmacist License No. 38585 to discipline.

9 2. A copy of the Accusation and Petition to Revoke Probation and the related
10 documents and Declaration of Service are attached.

11 3. The agency has jurisdiction to adjudicate this case by default.

12 4. The Director of Consumer Affairs is authorized to revoke Respondent's
13 Pharmacist License based upon the following violations alleged in the Accusation and Petition to
14 Revoke Probation:

15 a. Respondent is subject to disciplinary action under sections 4300
16 and 4301, subdivision (o) of the Business and Professions Code (Code), on the grounds of
17 unprofessional conduct, in that Respondent was practicing as a pharmacist during the time his
18 license was suspended.

19 b. Respondent is subject to discipline under sections 4300 and 4301,
20 subdivision (g) of the Code, on the grounds of unprofessional conduct in that Respondent signed
21 an application for employment that falsely represented a statement of fact.

22 c. Respondent failed to comply with probation conditions No. 1, 7, 12
23 and 20 as set forth in the Accusation and Petition to Revoke Probation.

24 //

25 //

26 //

27 //

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3

4
5
6
7
8

9

10

11
12
13

14
15

16

Exhibit A

Accusation and Petition to Revoke Probation No. 3022,
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
2 JENNIFER S. CADY
Supervising Deputy Attorney General
3 KEVIN W. BUSH, State Bar No. 210322
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2544
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Petition to Revoke Probation
Against:

12 ROBERT WILLIAM HESS

13 Respondent.
14

Case No. 3022

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

15
16 TO RESPONDENT:

17 Enclosed is a copy of the Petition to Revoke Probation that has been filed with the
18 Board of Pharmacy of the Department of Consumer Affairs (Board), and which is hereby served
19 on you.

20 Unless a written request for a hearing signed by you or on your behalf is delivered
21 or mailed to the Board, represented by Deputy Attorney General Kevin W. Bush, within fifteen
22 (15) days after a copy of the Petition to Revoke Probation was personally served on you or
23 mailed to you, you will be deemed to have waived your right to a hearing in this matter and the
24 Board may proceed upon the Petition to Revoke Probation without a hearing and may take action
25 thereon as provided by law.

26 The request for hearing may be made by delivering or mailing one of the enclosed
27 forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided
28 in section 11506 of the Government Code, to

1 Kevin W. Bush
2 Deputy Attorney General
3 Ronald Reagan Building
4 300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013.

6 You may, but need not, be represented by counsel at any or all stages of these
7 proceedings.

8 The enclosed Notice of Defense, if signed and filed with the Board, shall be
9 deemed a specific denial of all parts of the Petition to Revoke Probation, but you will not be
10 permitted to raise any objection to the form of the Petition to Revoke Probation unless you file a
11 further Notice of Defense as provided in section 11506 of the Government Code within fifteen
12 (15) days after service of the Petition to Revoke Probation on you.

13 If you file any Notice of Defense within the time permitted, a hearing will be held
14 on the charges made in the Petition to Revoke Probation.

15 The hearing may be postponed for good cause. If you have good cause, you are
16 obliged to notify the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los
17 Angeles, CA 90013, within ten (10) working days after you discover the good cause. Failure to
18 notify the Office of Administrative Hearings within ten (10) days will deprive you of a
19 postponement.

20 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are
21 enclosed.

22 If you desire the names and addresses of witnesses or an opportunity to inspect
23 and copy the items mentioned in section 11507.6 of the Government Code in the possession,
24 custody or control of the Board you may send a Request for Discovery to the above designated
25 Deputy Attorney General.

26 **NOTICE REGARDING STIPULATED SETTLEMENTS**

27 It may be possible to avoid the time, expense and uncertainties involved in an
28 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
settlement is a binding written agreement between you and the government regarding the matters

///

1 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
2 Board of Pharmacy but, once approved, it would be incorporated into a final order.

3 Any stipulation must be consistent with the Board's established disciplinary
4 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the
5 Board's Disciplinary Guidelines will be provided to you on your written request to the state
6 agency bringing this action.

7 If you are interested in pursuing this alternative to a formal administrative hearing,
8 or if you have any questions, you or your attorney should contact Deputy Attorney General Kevin
9 W. Bush at the earliest opportunity.

10 *****

11
12
13
14
15
16
17
18
19
20
21 KWB:lms
22 12/18/06
23 03583110-LA2006601326
24 60184155.wpd
25
26
27
28

BILL LOCKYER, Attorney General
of the State of California
JENNIFER S. CADY
Supervising Deputy Attorney General
KEVIN W. BUSH, State Bar No. 210322
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2544
Facsimile: (213) 897-2804

Attorneys for Complainant

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

ROBERT WILLIAM HESS
2921 Pico Place
Oxnard, CA 93033

Original Pharmacist License No. RPH 38585

Respondent.

Case No. 3022

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about June 11, 1984, the Board of Pharmacy issued Original Pharmacist License No. RPH 38585 to Robert William Hess (Respondent). Effective January 7, 1995, following a Default Decision, the Board of Pharmacy revoked Respondent's Pharmacist license. Effective October 8, 1999, the Board granted Respondent's petition for reinstatement. Upon reinstatement, the license was revoked. However, the revocation was stayed and Respondent was placed on probation for five (5) years with terms and conditions. On or about July 27, 2004, Respondent's Pharmacist license was suspended for failure to take and pass the

1 pharmacist's examination. The Original Pharmacist License expired on October 31, 2005, and
2 has not been renewed.

3 JURISDICTION

4 3. This Accusation and Petition to Revoke Probation is brought before the
5 Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the
6 following laws. All section references are to the Business and Professions Code unless otherwise
7 indicated.

8 4. Section 118, subdivision (b) states:

9 "The suspension, expiration, or forfeiture by operation of law of a license issued
10 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or
11 by order of a court of law, or its surrender without the written consent of the board, shall not,
12 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
13 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
14 ground provided by law or to enter an order suspending or revoking the license or otherwise
15 taking disciplinary action against the licensee on any such ground."

16 5. Section 4300 of the Code provides, in pertinent part, that every license
17 issued by the Board is subject to discipline, including suspension or revocation.

18 6. Section 4301 of the Code states:

19 "The board shall take action against any holder of a license who is guilty of
20 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
21 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
22 following:

23

24 "(g) Knowingly making or signing any certificate or other document that falsely
25 represents the existence or nonexistence of a state of facts.

26

27 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
28 abetting the violation of or conspiring to violate any provision or term of this chapter or of the

1 applicable federal and state laws and regulations governing pharmacy, including regulations
2 established by the board.

3 “(p) Actions or conduct that would have warranted denial of a license.”

4 7. Section 125.3 of the Code provides, in pertinent part, that the Board may
5 request the administrative law judge to direct a licensee found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 FIRST CAUSE FOR DISCIPLINE

9 (Practicing With A Suspended License)

10 8. Respondent is subject to disciplinary action under sections 4300 and 4301,
11 subdivision (o) of the Code, on the grounds of unprofessional conduct, in that Respondent was
12 practicing as a pharmacist during the time his license was suspended. The circumstances are as
13 follows:

14 a. From on or about June 5, 2003 to on or about October 10, 2004,
15 Respondent was employed by Medical Staffing Network for various pharmacies in California,
16 including but not limited to Apria Pharmacy Network, Ralphs and Albertsons.

17 b. From on or about March 1, 2004 to on or about December 17, 2004,
18 Respondent was employed as a staff pharmacist, on a part-time basis, by Apria Healthcare.

19 c. Respondent's Pharmacist license was suspended as of July 27, 2004.

20 SECOND CAUSE FOR DISCIPLINE

21 (Knowingly Signing a Document that Falsely Represents a State of Fact)

22 9. Respondent is subject to disciplinary action under sections 4300 and 4301,
23 subdivision (g) of the Code, on the grounds of unprofessional conduct in that Respondent signed
24 an application for employment that falsely represented a statement of fact. The circumstances are
25 as follows:

26 a. On or about January 17, 2001, Respondent completed an employment
27 application with Medical Staffing Network. Respondent certified that he had not been convicted
28 or that his license had not been disciplined or revoked for violation of pharmacy, liquor or drug

1 laws. Respondent failed to list all his convictions as set forth in Accusation No. 1278 and
2 Accusation and Petition to Revoke Probation, Case No. 1750. A copy of the Accusation and
3 Accusation and Petition to Revoke Probation are attached as Exhibit A and incorporated herein
4 by reference.

5 **PETITION TO REVOKE PROBATION**

6 10. In a disciplinary action entitled "In the Matter of the Accusation and
7 Petition to Revoke Probation Against Robert William Hess," Case No. 1750, the Board of
8 Pharmacy issued a Default Decision, effective January 7, 1995, in which Respondent's Original
9 Pharmacy license was revoked. In and about November 1998, Respondent petition for
10 reinstatement of his revoked license. Effective October 8, 1999, "In the Matter of the Petition of:
11 Robert W. Hess," OAH No. N 1999070047, the Board granted Respondent's petition for
12 reinstatement. Upon reinstatement, the license was revoked. However, the revocation was
13 stayed and Respondent was placed on probation for five (5) years with terms and conditions. A
14 copy of the decision is attached as Exhibit B and incorporated herein by reference.

15 The terms and conditions included:

16 Condition 1 of Probation:

17 "1. Respondent shall obey all federal and state laws and regulations
18 substantially related to or governing the practice of pharmacy."

19 Condition 7 of Probation:

20 "7. Respondent shall notify all present and prospective employers of the
21 decision of the Board in granting his petition and the terms, conditions and restrictions imposed
22 on respondent by the decision. Within thirty (30) days of the effective date of this decision, and
23 within fifteen (15) days of respondent undertaking new employment, respondent shall cause his
24 employer to report to the Board, in writing, acknowledging the employer has read the decision
25 granting the petition.

26 "If respondent works for or is employed by or through a pharmacy employment
27 service, respondent must notify the pharmacist-in-charge and/or owner at every pharmacy at
28 which he is employed or used of the facts and terms of the decision granting the petition in

1 advance of respondent commencing work at the pharmacy.

2 "Employment" within the meaning of this provision shall include any full-time,
3 part-time, "temporary or relief service or pharmacy management services as a pharmacist,
4 whether respondent is considered an employee or independent contractor."

5 Condition 12 of Probation:

6 "12. If respondent leaves California to reside or practice outside this state,
7 respondent must notify the Board, in writing, of the dates of departure and return within ten (10)
8 days of departure and return. Periods of residency, except such periods where respondent is
9 actively practicing pharmacy within California or practicing outside California, shall not apply to
10 reduction of the probationary period.

11 "Should respondent, regardless of residence, for any reason cease practicing
12 pharmacy in California, respondent must notify the Board, in writing, with ten (10) days of
13 cessation of the practice of pharmacy or resuming the practice of pharmacy. 'Cessation of
14 practice' means any period of time exceeding thirty (30) days in which respondent is not engaged
15 in the practice of pharmacy as defined in Business and Professions Code section 4052.

16 "It is a violation of probation for respondent's probation to remain tolled pursuant
17 to the provisions of this condition for a period exceeding a consecutive period of three (3) years."

18 Condition 20 of Probation:

19 "20. Respondent shall take and pass the law section of the pharmacist licensure
20 examination as scheduled by the Board after the effective date of this decision. If respondent
21 fails the examination or fails to take the examination, he shall be suspended, upon written notice.
22 Respondent shall not resume the practice of pharmacy until he takes and passes the same section
23 at a subsequent examination and is notified, in writing, that he has passed the examination."

24 GROUND FOR REVOKING PROBATION

25 11. Grounds exist for revoking probation and reimposing the order of
26 revocation of Respondent's Original Pharmacist licenses in that Respondent failed to comply
27 with the following terms of probation.

28 a. Probation No. 1. Respondent shall obey all federal and state laws and

1 regulations substantially related to the practice of pharmacy. Respondent failed to obey the
2 regulations relating to the practice of pharmacy in that Respondent was working as a pharmacist
3 from on or about July 27, 2004 through on or about December 17, 2004, during the time his
4 license was suspended.

5 b. Probation No. 7. Respondent shall notify all employers of the decision of
6 the Board in granting his petition for reinstatement. Respondent failed to cause his employer,
7 Medical Staffing Network, to report to the Board acknowledging the employer had read the
8 decision granting the petition.

9 c. Probation No. 12. It is a violation of probation for Respondent's probation
10 to remain tolled for a period exceeding a consecutive period of three (3) years. Respondent
11 allowed his probation to remain tolled for more than three (3) years.

12 d. Probation No. 20. Respondent shall take and pass the law section of the
13 pharmacist licensure examination. Respondent failed to take and pass the pharmacist's
14 examination. Consequently the Board suspended Respondent's license on July 27, 2004.

15 AGGRAVATING CIRCUMSTANCES

16 12. To determine the degree of discipline to be imposed on Respondent, if
17 any, Complainant makes the following allegations:

18 a. In a disciplinary action entitled "In the Matter of the Accusation Against:
19 Robert William Hess", Case No. 1607, the Board of Pharmacy issued a decision, effective
20 September 2, 1993, in which Respondent's Original Pharmacist license was revoked. However
21 the revocation was stayed and Respondent's license was placed on probation for a period of
22 three (3) years with terms and conditions.

23 b. In a disciplinary action entitled "In the Matter of the Accusation Against:
24 Robert William Hess", Case No. 1278, the Board of Pharmacy issued a decision, effective June
25 21, 1986, in which Respondent's Original Pharmacist license was revoked. However the
26 revocation was stayed and Respondent's license was placed on probation for a period of three
27 (3) years with terms and conditions.

28 //

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

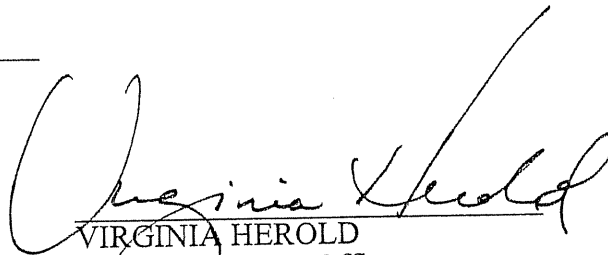
4 1. Revoking the probation that was granted by the Board of Pharmacy in
5 OAH No. N 199070047 and imposing the disciplinary order that was stayed thereby revoking
6 Original Pharmacy License No. RPH 38585 issued to Robert William Hess.

7 2. Revoking or suspending Pharmacist License No. RPH 38585, issued to
8 Robert William Hess.

9 3. Ordering Robert William Hess to pay the Board of Pharmacy the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 125.3;

12 4. Taking such other and further action as deemed necessary and proper.

13 DATED: 11/16/06

14 

15 VIRGINIA HEROLD
16 Interim Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against:

ROBERT WILLIAM HESS

Respondent.

Case No. 3022

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Petition to Revoke Probation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Petition to Revoke Probation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Petition to Revoke Probation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

60184155.wpd

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against:

ROBERT WILLIAM HESS

Respondent.

Case No. 3022

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Petition to Revoke Probation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Petition to Revoke Probation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Petition to Revoke Probation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

60184155.wpd

1 BILL LOCKYER, Attorney General
of the State of California
2 JENNIFER S. CADY
Supervising Deputy Attorney General
3 KEVIN W. BUSH, State Bar No. 210322
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2544
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke Probation
Against:

12 ROBERT WILLIAM HESS

13 Respondent.

Case No. 3022

14 **REQUEST FOR DISCOVERY**

[Gov. Code § 11507.6]

15 TO RESPONDENT:

16 Under section 11507.6 of the Government Code of the State of California, parties
17 to an administrative hearing, including the Complainant, are entitled to certain information
18 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the
19 Government Code concerning such rights is included among the papers served.

20 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU
21 ARE HEREBY REQUESTED TO:

- 22 1. Provide the names and addresses of witnesses to the extent known to the
23 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
- 24 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
25 the following in the possession or custody or under control of the Respondent:

26 ///

27 ///

28 ///

1 a. A statement of a person, other than the Respondent, named in the initial
2 administrative pleading, or in any additional pleading, when it is claimed that the act or
3 omission of the Respondent as to this person is the basis for the administrative
4 proceeding;

5 b. A statement pertaining to the subject matter of the proceeding made by any
6 party to another party or persons;

7 c. Statements of witnesses then proposed to be called by the Respondent and
8 of other persons having personal knowledge of the acts, omissions or events which are the
9 basis for the proceeding, not included in (a) or (b) above;

10 d. All writings, including but not limited to reports of mental, physical and
11 blood examinations and things which the Respondent now proposes to offer in evidence;

12 e. Any other writing or thing which is relevant and which would be
13 admissible in evidence, including but not limited to, any patient or hospital records
14 pertaining to the persons named in the pleading;

15 f. Investigative reports made by or on behalf of the Respondent pertaining to
16 the subject matter of the proceeding, to the extent that these reports (1) contain the names
17 and addresses of witnesses or of persons having personal knowledge of the acts,
18 omissions or events which are the basis for the proceeding, or (2) reflect matters
19 perceived by the investigator in the course of his or her investigation, or (3) contain or
20 include by attachment any statement or writing described in (a) to (e), inclusive, or
21 summary thereof.

22 For the purpose of this Request for Discovery, "statements" include written
23 statements by the person, signed, or otherwise authenticated by him or her, stenographic,
24 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,
25 and written reports or summaries of these oral statements.

26 ///

27 ///

28 ///

1 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
2 Discovery should be deemed to authorize the inspection or copying of any writing or thing which
3 is privileged from disclosure by law or otherwise made confidential or protected as attorney's
4 work product.


5 Your response to this Request for Discovery should be directed to the undersigned
6 attorney for the Complainant at the address on the first page of this Request for Discovery **within**
7 **30 days after service** of the Petition to Revoke Probation.

8 Failure without substantial justification to comply with this Request for Discovery
9 may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30
10 of the Government Code.

11 DATED: 12/18/06

12 BILL LOCKYER, Attorney General
13 of the State of California

14 JENNIFER S. CADY
15 Supervising Deputy Attorney General

16 
17 KEVIN W. BUSH
18 Deputy Attorney General

19 Attorneys for Complainant
20
21
22

23 KWB:lms
24 12/18/06
25 03583110-LA2006601326
26 60184155.wpd
27
28

COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

DECLARATION OF SERVICE BY CERTIFIED MAIL

Case Name: **Robert William Hess**

No.: 3022

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 20, 2006, I served the attached **STATEMENT TO RESPONDENT, ACCUSATION AND PETITION TO REVOKE PROBATION, EXHIBIT A - DECISION AND ORDER CASE NOS. 1278 and 1750, EXHIBIT B - DECISION, NOTICE OF DEFENSE (in duplicate), REQUEST FOR DISCOVERY, and GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Robert William Hess
2921 Pico Place
Oxnard, CA 93033

U.S. Mail Cert. No.
7001 0360 0003 6710 2925

I declare under penalty of perjury under the law of the State of California and correct and that this declaration was executed on December 20, 2006.

Louise Steinberg
Declarant

60184178.wpd

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To ROBERT W. HESS
Street, Apt. No.,
or PO Box No.
City, State, ZIP+ 4

PS Form 3800, January 2001

See Reverse for Instructions

Exhibit B
Postal Return Document

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Robert William Hess
2921 Pico Place
Oxnard, CA 93033

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

12/23/06

C. Signature

X Robert Hess

☐ Agent☒ AddresseeD. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail☐ Registered ☐ Return Receipt for Merchandise☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

Article Number (Copy from service label)

7001 0360 0003 6710 2925



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

ATTORNEY GENERAL
STATE OF CALIFORNIA
300 S. SPRING ST.
LOS ANGELES, CA 90013

ATTN. DAC BUSH

